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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,650	01/22/2002	Bernard A. Traversat	5681-07400	9438

7590 09/28/2006

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EXAMINER

JOO, JOSHUA

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/055,650

Applicant(s)

TRAVERSAT ET AL.

Examiner

Joshua Joo

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 9/11/2006 have been fully considered but they are not persuasive. Applicant argued that Davis does not describe peer-to-peer protocols for enabling the plurality of peer nodes to discover each other, communicate with each other, and share content in the peer-to-peer environment.

In response, Davis teaches,

- i) (Col 8, lines 21-23) "A given computer may also function as a peer in a peer-to-peer network..."
- ii) (Col 9, lines 5-8) "the sending endnode 32 and the receiving endnode 34 contain software controlling a computer for establishing a network communication session..."
- iii) (Col 9, lines 23-25) "The term "connection" refers to communications channel established between a service on one endnode and a corresponding service on another endnode".
- iv) (Col 10, lines 4-8) "an application on one endnode will register itself as a service, a second application on the same or another endnode asks to connect to that name and service type, and the embodiment sets up the connection"

According to the quoted sections of Davis, the endnodes are enabled to set up a connection to establish a communication session with each other, and function as peers in a peer-to-peer network. Davis does not explicitly teach of peer-to-peer protocols. Nonetheless, Davis does teach of setting up a connection between endnodes that function as peers, which are steps of a protocol for establishing communications, and it is essential that the endnodes function according to peer-to-peer protocols, e.g. exchange set up messages, acknowledgements, requests, responses, set up quality of service parameters, in order for the endnodes to function as peers and communicate in a peer-to-peer network.

Applicant admitted in Remarks filed 9/11/2006 that the concept of discovery is well understood in the art of network computing. Therefore, it is well known to one of ordinary skill in the art that if the endnodes are able to communicate with each other in peer-to-peer networking, the communication between peers must involve protocols for the peers to discover and communicate each other.